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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,960	04/14/2004	Robert A. Lenart	27475/07380	5439
24024	7590	03/24/2006		
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			EXAMINER KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,960

Applicant(s)

LENART ET AL.

Examiner

Eric Keasel

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3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33,34,39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33,34,39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 34 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,736,369. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the limitations set forth in claim 34 of the present application are found either explicitly or implicitly in claim 3 of ‘369.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 34 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Grimes et al. (US Patent Number 3,921,903).

Grimes et al. disclose a faucet, comprising: a housing (10, 26, 24, 36, 50), a cartridge cap (56) positioned inside and movable within the housing; and a handle (62, 18) pivotally attached to the housing, the handle including an extension (18) which extends away from the pivotal connection of the handle to the housing; wherein a force applied to the extension of the handle will cause the handle to pivot and apply a downward force to the cartridge cap; wherein the cartridge cap is positioned inside and movable within the housing; the handle includes a projection (the depending portions from 18 that project and slide through the opening when the handle is actuated); and the force applied to the extension of the handle will cause the handle to pivot and force the projection to slide through the opening in the top and into the upper end of the housing; wherein the cartridge cap includes an upper cam surface having a highest point (the upper left portion of the top of 56); and a handle pivotally attached to the housing, the handle including a projection, the handle further including an extension which extends away from the pivotal connection of the handle to the housing; wherein the highest point of the upper cam surface of the cartridge cap is offset toward the pivotal connection of the handle to the housing;

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and wherein a force applied to the extension of the handle will cause the handle to pivot and force the projection to slide upon the upper cam surface of the cartridge cap to apply a downward force to the cartridge cap; the force applied to the extension of the handle will cause the handle to pivot and force the projection to slide through the opening in the top and into the upper end of the housing; and wherein the housing has a cylindrical portion (the inner diameter surface of 50) that abuts a cylindrical wall of the cap.

5. Claims 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Klingler (US Patent Number 3,168,112).

Klingler discloses a faucet, comprising: a housing (16, 23, 33, 34), a cartridge cap (read as either the top portion of 36 or bearing (29, 30)) positioned inside and movable within the housing; and a handle (39) pivotally attached to the housing, the handle including an extension which extends away from the pivotal connection of the handle to the housing; wherein a force applied to the extension of the handle will cause the handle to pivot and apply a downward force to the cartridge cap; wherein the cartridge cap is positioned inside and movable within the housing; wherein the cap has an opening with the pivotal connection of the handle being at least partially within the opening of the cap and wherein the housing has a cylindrical portion that abuts a cylindrical portion of the cap.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 33, 34, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. in view of Homeyer et al. (US Patent Number 3,003,519).

Grimes et al. disclose a faucet as outlined above. However, alternatively, if the upper portion (56) of the cartridge (48) is not read as the cap, Grimes et al. fail to disclose the cap. Homeyer et al. disclose the use of a cap (see Fig. 1) in a similar cartridge-type faucet. It would have been obvious to one having ordinary skill in the art to have used the cartridge cap (24) of Homeyer et al. with the faucet of Grimes et al. to provide a larger bearing surface for the actuator and to house both the upper portion of the cartridge and spring as taught by Homeyer et al. Note, that given the geometry of the devices of Grimes et al. and Homeyer et al. an open portion of the cylindrical cap would be formed in the location of the pivotal connection of the handle to accommodate the structure.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric Keasel
Primary Examiner
Art Unit 3754